

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

JULIO CANO, :
Petitioner, :
: :
v. : C.A. No. 24-147WES
: :
WAYNE SALISBURY, :
Respondent. :
:

**MEMORANDUM AND ORDER
DENYING MOTION FOR APPOINTMENT OF COUNSEL WITHOUT PREJUDICE**

PATRICIA A. SULLIVAN, United States Magistrate Judge.

Now pending before the Court is Petitioner Julio Cano's motion requesting the appointment of counsel to represent him in connection with his Petition for issuance of the writ of habeas corpus pursuant to 28 U.S.C. § 2254. ECF No. 6. The motion arises pursuant to 18 U.S.C. § 3006A(a)(2)(B), which provides that "representation may be provided for any financially eligible person who . . . is seeking relief under" 28 U.S.C. § 2254. 18 U.S.C. § 3006A(a)(2)(B). The motion has been referred to me for determination. 28 U.S.C. § 636(b)(1)(A).

There is no constitutional right to counsel in a federal habeas corpus proceeding. Pennsylvania v. Finley, 481 U.S. 551, 555 (1987); Ellis v. United States, 313 F.3d 636, 652 (1st Cir. 2002). Rather, counsel may be appointed in a § 2254 action for a petitioner who has been found to be "financially unable to obtain adequate representation . . . [w]henever the United States magistrate judge or the court determines that the interests of justice so require." 18 U.S.C. § 3006A(a)(2). To make the latter determination, the "court must examine the total situation, focusing, *inter alia*, on the merits of the case, the complexity of the legal issues, and the litigant's ability to represent himself." Manisy v. Maloney, 283 F. Supp. 2d 307, 317 (D. Mass. 2003)

(quoting DesRosiers v. Moran, 949 F.2d 15, 24 (1st Cir. 1991)). Counsel should not be appointed unless the petitioner can shoulder the burden of demonstrating that the denial of counsel would result in “fundamental unfairness impinging on the party’s due process rights.” Forte v. Comm’r of Corr., 134 F. Supp. 3d 654, 655 (D. Mass. 2015) (internal quotation marks omitted). Only if it becomes clear that the issues raised by the petition will require an evidentiary hearing do the rules governing federal habeas proceedings require the appointment of counsel. See Rule 8(c), Rules Governing Section 2254 Cases. Otherwise, the habeas rules do not require the appointment of counsel in § 2254 cases. Ali v. Gerry, No. 12-cv-185-JL, 2012 WL 4848889, at *1 (D.N.H. Oct. 10, 2012).

Petitioner accompanied his Petition with a motion for *in forma pauperis* (“IFP”) status. ECF No. 2. While the Court has found that Plaintiff is not eligible to proceed IFP with respect to the modest filing fee required for a habeas petition, it does find the IFP motion adequate to establish that Petitioner is financially unable to obtain adequate representation. Therefore, the indigency prong of 18 U.S.C. § 3006A(a)(2) is satisfied. As to the “interests of justice” prong, Petitioner simply asks the Court to appoint counsel because he is unable to represent himself and the ends of Justice would be best served by appointment of counsel. ECF No. 6 at 1.

The Court finds that Petitioner’s motion for counsel is premature because, with no response yet to the Petition from the State, it is impossible for the Court to assess the merits of the claims and the complexity of the legal issues presented; further, the Court cannot determine whether each of the issues Petitioner seeks to raise is appropriately exhausted and ripe for § 2254 consideration. Nor at this early stage is the Court able to assess Petitioner’s capacity for self-representation. Finally, at this early stage, it is impossible to find that an evidentiary hearing will be necessary.

After the State has responded to the Petition, Petitioner may renew his motion for counsel. For now, however, based on the foregoing analysis, Petitioner's motion for appointment of counsel (ECF No. 6) is denied without prejudice as premature.

/s/ Patricia A. Sullivan
PATRICIA A. SULLIVAN
United States Magistrate Judge
June 11, 2024